

REMARKS

Applicant would like to thank the Examiner for the detailed Official Action provided. Upon entry of the present response, claims 1, 4 and 6 will have been amended. The amendment to claims 1, 4 and 6 will have been made merely for cosmetic purposes (*i.e.*, to correct a clerical error), and should not be considered to have been made for purposes related to patentability. No new matter will have been introduced by the above-made amendment. Claims 1-6 are pending for consideration by the Examiner. Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections of the claims pending in the present application. Such action is respectfully requested and is now believed to be appropriate.

Obviousness Rejections Under 35 U.S.C. §103

The Examiner rejected claims 1-4 and 6 as being unpatentable under 35 U.S.C. §103(a) over COCOZZA (U.S. Pat. No. 4,013,075) in view of OHKI et al. (U.S. Pat. No. 5,810,004). Claim 5 was rejected as being unpatentable under 35 U.S.C. §103(a) over COCOZZA and OHKI and further in view of OHKI et al. (U.S. Pat. No. 6,341,605).

Applicant respectfully traverses the obviousness rejections and request withdrawal of the rejections in view of the following remarks.

For an obviousness rejection under §103(a) to be proper, the reference must indicate that each limitation is shown or the Examiner must provide at least a clear articulated reason for rendering the claimed invention obvious. In this regard, it is respectfully asserted that COCOZZA, either alone or in any proper combination with OHKI ('004), fails to disclose or render obvious the combination of features as recited in at least independent claims 1 and 4.

Independent claims 1 and 4 each generally recite a device to deliver a powdery medicine contained in a capsule to a nasal cavity. The device includes, *inter alia*, a capsule holder that

holds the capsule filled with the powdery medicine. The capsule holder is movable between a connection port on a side of a nozzle and a connection port on a side of a pump. The capsule holder is also movable forward and backward relative to a loading position of the capsule. The device further includes a cutter that partially cuts off both ends of the capsule that moves forward to the loading position while being held by the capsule holder to make the holes on opposite ends of the capsule. The cutter includes a pair of blades secured in parallel with each other, each blade having a blade tip directed in a direction opposing the advancing direction of the capsule holder. Peripheral portions of both of the connection ports are formed as seal projections that project from surfaces of the blades toward a loading space, and a distance between the seal projections is shorter than a length of the capsule after cutting off both ends by the cutter, so that both ends of the capsule loaded between them is pressed by both seal projections.

In this regard, Applicant respectfully assert that COCOZZA, either alone or in any proper combination with OHKI ('004), at least fails to disclose a device to deliver a powdery medicine contained in a capsule to a nasal cavity including peripheral portions of both of the connection ports formed as seal projections that project from surfaces of the blades toward a loading space, wherein a distance between the seal projections is shorter than a length of the capsule after cutting off both ends by the cutter, so that both ends of the capsule loaded between them are pressed by both seal projections, as generally recited in independent claims 1 and 4.

With respect to the obviousness rejection of independent claims 1 and 4, the Examiner asserts that COCOZZA discloses the combination of features except for the peripheral portions, as generally recited. More specifically, the Examiner admits, and Applicant agrees, that COCOZZA fails to disclose or render obvious at least peripheral portions of both of the connection ports formed as seal projections that project from surfaces of the blades toward a

loading space, wherein a distance between the seal projections is shorter than a length of the capsule after cutting off both ends by the cutter, so that both ends of the capsule loaded between them is pressed by both seal projections, as generally recited in independent claims 1 and 4.

However, the Examiner introduces OHKI ('004) for the alleged disclosure of the peripheral portions as generally recited in independent claims 1 and 4. More specifically, the Examiner asserts that male screw 9D and female screw 20A correspond to the peripheral portions, as generally recited, and that movable member 9 and screw hole 20 correspond to the connection ports, as generally recited. Further, the Examiner asserts that a distance between the male screw 9D and the female screw 20A is shorter than a length of the capsule after cutting both ends by the cutter, so that both ends of the capsule loaded between them are pressed by both the male screw 9D and the female screw 20A.

Applicant respectfully disagrees, and contrary to the Examiner's assertions, Applicant asserts that the male screw 9D and the female screw 20A cannot reasonably be considered to be peripheral portions as generally recited in at least independent claims 1 and 4. That is, Applicant asserts that the Examiner has failed to consider the entirety of the recitation of the peripheral portions. More specifically, OHKI ('004) fails to show that the male screw 9D and the female screw 20A are formed as seal projections that project from surfaces of the blades toward a loading space. In contrast, OHKI ('004) merely discloses that the male screw 9D and the female screw 20A are configured to mate with each other. At best, the threads of each screw could be considered to be projections. However, even if the threads could be considered to be projections, the threads clearly do not project from surfaces of the blades towards a loading space. In fact, the threads are nowhere near the steeples 24 and 25 (generally interpreted as "blades"). *See e.g.*, FIG. 4 of OHKI ('004). Further, the threads of the male screw 9D actually project away from a

receiving hole 13 (that hold a capsule K), rather than towards a loading space, as generally recited in independent claims 1 and 4. Thus, for at least these reasons, OHKI ('004) fails to disclose or render obvious the peripheral portions, as generally recited in independent claim 1.

OHKI ('004) also fails to disclose that a distance between the male screw 9D and the female screw 20A is shorter than a length of the capsule after cutting both ends by the cutter, so that both ends of the capsule loaded between them are pressed by both the male screw 9D and the female screw 20A. In this regard, Applicant asserts that the distance between the male screw 9D and the female screw 20A is always the same, regardless of whether the capsule is cut or not. That is, at least because the screws 9D and 20A are configured with mating threads for purposes of connecting to one another, the screws 9D and 20A are in constant contact. Thus, it is unclear how the Examiner determined that the distance between the screws 9D and 20A is shorter than a length of the capsule after cutting both ends by the cutter, so that both ends of the capsule loaded between them are pressed by both the male screw 9D and the female screw 20A.

In fact, the length of the capsule K also never changes at least because the OHKI ('004) invention is designed such that the steeples 24 and 25 merely puncture a top and bottom end of the capsule K to create air streaming holes H1 and H2, respectively. That is, OHKI ('004) does not disclose that the capsule is cut, or that the length of the capsule changes after the capsule is punctured. Accordingly, as clearly shown in at least FIG. 4 of OHKI ('004), the length of the capsule K before and after "puncture" never changes, and both ends of the capsule are not pressed by both the male screw 9D and the female screw 20A. At best, an inner upper surface of the spray formed passage member 18 at (H2) and an inner lower surface of the movable member 9 at (H1) arguably press the top and bottom of the capsule, respectively. However, Applicant asserts that even these surfaces do not project from surfaces of the blade towards a loading space.

Rather, the steeples 24 and 25 project through these surfaces to puncture the capsule. Thus, for at least these reasons, COCOZZA, alone or in any proper combination with OHKI, fails to disclose or render obvious the combination of features as generally recited in independent claims 1 and 4.

Applicant further asserts that the Examiner has failed to articulate a clear reason for why one having ordinary skill in the art would modify COCOZZA's invention to include a male screw 9D and a female screw 20A at the air inlet chamber 35 (allegedly corresponding to one of the connection ports as generally recited) and the tapered outlet channel 37 (allegedly corresponding to the other connection port as generally recited). In fact, Applicant asserts that the proposed modification to the COCOZZA invention would render COCOZZA unsatisfactory for its intended purpose, *i.e.*, loading and cutting the capsule for nasal administration. That is, the configuration of the COCOZZA device for loading and cutting the capsule is completely different than the configuration of the OHKI ('004) device for doing the same. In this regard, COCOZZA includes a pivotally rotatable capsule holder 12. The capsule holder 12 is pivotally rotatable in and out of a body 31. When the capsule is ready to be loaded in the capsule holder 12, the capsule holder 12 is pivoted out of a side portion of the body 31, and the capsule is loaded into bore 15. The capsule holder 12 is then pivoted back into the body 31. As the capsule is loaded, cutting blades 20, 20' cut a top and bottom portion of the capsule as the top and bottom portions of the capsule are aligned with the outlet channel 37 and air inlet chamber 35, respectively. If, COCOZZA were modified as suggested by the Examiner, the male screw 9D and the female screw 20A would extend from the air inlet chamber 35 and the outlet channel 37, respectively. Because the screws 9D and 20A are configured to mate with one another, Applicant asserts that the screws would at least prevent the capsule holder 12 from being

pivotally rotatable in and out of the body 31, and further prevent the blades from cutting the top and bottom portions of the capsule. Thus, for at least these additional reasons, Applicant asserts that COCOZZA cannot reasonably be combined with OHKI ('004) at least because such a combination would render the resultant device inoperable for its intended purpose. Thus, Applicant respectfully requests that the Examiner withdraw the outstanding rejections of at least independent claims 1 and 4.

Further, Applicant asserts that rejected claims 2, 3, 5 and 6 are dependent, either directly or indirectly, from at least one of allowable independent claims 1 and 4, which are allowable for at least the reasons discussed *supra*. Thus, these dependent claims are also allowable for at least the reasons discussed *supra*. Further, claims 2, 3, 5 and 6 set forth further combinations of elements neither disclosed nor rendered obvious by any of the references of record. It is thus respectfully requested that the Examiner withdraw the rejections of claims 2, 3, 5 and 6 under 35 USC §103(a) as well.

Thus, for each of the above-noted reasons and certainly for all of the above-noted reasons, it is respectfully asserted that the Examiner's rejections are inappropriate and improper. Accordingly, Applicants respectfully request reconsideration and withdrawal of each of the outstanding rejections together with an action indicating the allowability of all the claims pending in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

Applicant notes that the status of the present application is after final rejection and that once a final rejection has issued, an Applicant does not have a right to amend an application. Nevertheless, in the present situation, Applicant respectfully submits that entry of the present amendments are appropriate and proper and in full compliance with 37 C.F.R. § 1.116, since

they are merely made for purposes of consistency and clarity. Accordingly, Applicant respectfully asserts that the present amendment raises no issues requiring further consideration or search and thus should be entered by the Examiner.

SUMMARY


Applicant asserts that the present application is in condition for allowance, and respectfully requests an indication to that effect. Applicant has argued the allowability of the claims and pointed out deficiencies of the applied reference. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Applicant notes that the amendments to the claims have not been made for a purpose related to patentability, but rather have been made to correct minor informalities (as discussed *supra*). The amendments should thus be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto. Accordingly, this amendment should not be considered a decision by Applicant to narrow the claims in any way.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

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